

CAITHNESS CORP.

IBLA 83-265

Decided April 29, 1983

Appeal from decision of California State Office, Bureau of Land Management, rejecting geothermal resources applications CA 12593 and CA 12594.

Vacated and remanded.

1. Applications and Entries: Amendments--Geothermal Leases:	Applications:
Amendments--Geothermal Leases: Applications: Description--Geothermal Leases: Description of Land	

Normally, a noncompetitive geothermal lease application which fails to include all available lands within surveyed or protracted sections, as required by regulation, 43 CFR 3210.2-1(c), is properly rejected as to such sections. However, where an applicant files for all the lands shown to be available on the BLM leasing plat, but immediately thereafter discovers and proves the plat to be in error because other lands are available in those sections, and covers the omissions by filing "companion" applications which, when combined with the originals encompass all the lands actually available, the "combined" applications will be deemed acceptable in the peculiar circumstances of that particular case.

APPEARANCES: Philip H. Essner, Esq., Santa Rosa, California, and Kenneth Nemzer, Esq., San Francisco, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

The Caithness Corporation has appealed from decisions of the California State Office, Bureau of Land Management (BLM), dated November 24, 1982, and December 2, 1982, respectively, rejecting its noncompetitive geothermal resources applications, CA 12593 and CA 12594. The decision was based on noncompliance with 43 CFR 3210.2-1(c), which requires an application to include

"all available lands, including reserved geothermal resources, within a surveyed or protracted section * * *."

On April 1, 1982, appellant filed its application to lease geothermal resources, which included the following lands: T. 43 N., R. 2 E., Mount Diablo meridian, sec. 4, SW 1/4 NE 1/4, W 1/2 SE 1/4; sec. 5, lots 3 and 4, S 1/2 NW 1/4; sec. 8, E 1/2 SE 1/4; sec. 9, W 1/2 SW 1/4, NE 1/4, NE 1/4 NW 1/4; sec. 10, N 1/2 NW 1/4; and sec. 17, NE 1/4 NE 1/4, totaling 760.96 acres. The forementioned lands are a reflection of all the available lands according to the LSBL ("Leasable") Resources Plat as of the date of appellant's filing. Subsequent to the filing of appellant's application it was discovered that additional lands, not reflected by the plat, were available for leasing. By its letter dated May 24, 1982, appellant filed additional "companion" applications covering the lands which it had newly discovered to be available, with directions to BLM to combine these new applications with those already on file, so that the combined applications would cover all of the lands actually available in each section applied for, viz:

Section 4 = combine application CA12593 with CA12594
 Section 5 = combine application CA12593 with CA12594
 Section 8 = combine application CA12592 with CA12593
 Section 9 = combine application CA12592 with CA12593
 Section 10 = combine application CA12592 with CA12593
 Section 17 = combine application CA12402 with CA12593

The reason that appellant found it necessary to file in this manner is explained in its statement of reasons for appeal, as follows:

[I]t is admittedly unusual to use a combination filing, and the procedure requires a reasoned explanation. The purpose of this brief is to give that explanation.

A status of the combination application is as follows. Noncompetitive lease applications CA 12593 and CA 12594 were submitted by Appellant Caithness Corporation in March 1982, and both filed by the California Office on its next monthly filing date: April 1, 1982. That combination of two applications covered all available lands in Sections 4 and 5 of T. 43 N., R. 2 E., MDM. It should be noted that a parallel situation has been created with respect to Sections 8, 9, 10, and 17 of that township and range: Applications CA 12592 and CA 12402 include all lands in those sections not covered by CA 12593, but those two applications have not yet been acted upon by the California Office.

3. History of Filings on Relevant Sections.

* * * * *

Appellant Caithness Corporation submitted applications which included parts of the relevant sections during March 1982. They included all lands shown to be available by the "LSBL

Resources Plat" in the official California BLM Office records. Before the end of a filing period, Appellant investigated further by referring to the records of Siskiyou County of California. Those records showed a mistake in the LSBL Resources Plat: it showed that the relevant lands were owned by the United States of America. In response to that discovery, and before the end of the filing period, Appellant completed its filing with its companion applications, CA 12593, describing all remaining lands of each subject section. (Only SW 4, NW 4, Section 8, was in fact unavailable.) The error in the BLM plat is shown on a copy of that plat attached hereto as Exhibit "C" and by this reference incorporated herein. The blue-line portions show the lands which were available at all times since 1943, but were shown as unavailable on the plat when the Appellant applied.

Acting immediately upon the new information, Appellant submitted its application for all lands in the subject sections, submitting the descriptions in supplementary application CA 12593. That supplementary application was submitted in March 1982 and was filed by the BLM at the next filing date, April 1, 1982, in combination with the application which it supplemented. Thereby Appellant became the first Applicant ever to file on all available lands in each of the subject sections. The chart attached as Exhibit "D" and incorporated herein by this reference shows, as to each subject section, the combination of lands which were included in the applications.

In the course of these submissions, the undersigned was in contact with Tanina Scimemi, Land Law Examiner for the California BLM Office. Upon being informed of the record error, Ms. Scimemi requested documentary proof thereof. The undersigned provided such documentation; true copies are attached hereto and by reference incorporated herein, as follows. Exhibit "A" is a true copy of the grant deed from volume 144, page 147, of the Siskiyou County records, which documents a conveyance from Longbell Lumber Co. to the United States of America, recorded February 24, 1943. It was provided by Roger W. Hunter, "Cadastral Property Map and Title Supervisor" for Siskiyou County. Exhibit "B" is a "Status Map Tabular Record," provided by William Lest of the United States Forest Service, San Francisco, and described by him as an official record of the United States.

The California Office deemed these documents to be satisfactory proof of the land records. On the basis of those records the California Office corrected the LSBL Resource Plat.

Appellant acted at all times in good faith and pursuant to the instructions of the California Office. It has in all instances brought correct and verified information to the BLM California Office and has in fact been instrumental in correcting those records. To deny Appellant's application on those facts is a notable error.

We agree. It appears that appellant has been penalized both by the fact that BLM's plat of leasable resources was in error and by appellant's diligence in discovering and proving the error. Had appellant not discovered the additional land available in these sections, or had it failed to report its discovery to BLM, it probably would have received leases for those lands shown to be available on BLM's plat, as appellant's offers for those lands allegedly had priority. But the issuance of such leases would have contravened the regulation (43 CFR 3210.2-1(c)), and, conceivably, could have resulted in administrative cancellation upon subsequent discovery of the error. On the other hand, had appellant withdrawn its original applications and filed new applications describing all of the lands it believed to be available, it would have sacrificed its original priority and risked rejection in the event that BLM insisted on leasing in accordance with what its plat showed to be available. Moreover, 43 CFR 3210.2-2 provides, in part, "No applicant shall file during the same application filing period a second application which overlaps any of the land covered by his first application."

The only possible solution to appellant's dilemma was to preserve its original priority to the "plat lands" and file new applications during the same filing period for the additional "discovered lands" in each section, with instructions to BLM to combine the second applications with the first.

In the special circumstances of this particular case, we hold that this procedure was acceptable. Neither BLM nor the junior applicants for the "plat lands" were disadvantaged thereby. Indeed, BLM was greatly benefitted by the efforts of appellant. The other applicants would have been, or should have been, rejected anyway because of their inferior priorities and/or because their applications did not encompass all the lands actually available in each section. Appellant was the first to file for both the "plat lands" and the additional "discovered lands," and therefore should enjoy an equitable priority, if not a legal priority.

Our decision in this case is easily distinguished from our previous decisions holding that amendments of land descriptions in noncompetitive geothermal lease applications would not be allowed, notably Diane B. Katz, 47 IBLA 1 (1980), and Edward B. Towne, 21 IBLA 304 (1975). Both of those cases involved attempts by the applicant to correct their own "typographical" or "clerical" errors in the land descriptions after the close of the filing period and after BLM had issued decisions based upon their inadequate land descriptions. See also Energy Partners, Edward B. Towne, 21 IBLA 352 (1975), insofar as that decision relates to the Towne application. None of the foregoing cases involved a failure on the part of BLM's leasing plat to display all of the lands actually available, and the discovery and rectification of that error by the applicant during the filing period.

We regard the circumstances of this case as unique and our holding with regard hereto must be treated as sui generis.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed

from are vacated and the case remanded for further adjudication consistent herewith.

Edward W. Stuebing

Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge.

